Executive Summary
Direct Investigation Operation Report

Leisure and Cultural Services Department's Handling of Obstructions to Passageways by Bicycles Owned by Operators of Bicycle Rental Services

Introduction

Earlier this year, this Office received a complaint against the Leisure and Cultural Services Department ("LCSD"). Allegedly, an operator of the bicycle rental services in a certain park under LCSD ("the Operator") had been placing a large number of bicycles outside its business area for a protracted period, causing obstruction to a passageway nearby, but LCSD had failed to monitor the Operator effectively such that the irregularities persisted.

2. In the course of investigation, we noticed that there are other LCSD recreational venues with bicycle rental services provided by different operators. Operators placing their bicycles outside the permitted areas in violation of regulations not only causes obstruction to passageways and affect the members of the public to access to and use of recreational facilities, but may also pose safety hazards, which simply cannot be ignored. Against this background, we have probed thoroughly LCSD's management arrangements with respect to the display and storage of bicycles by bicycle rental service operators, as well as the Department's enforcement mechanism for tackling related irregularities. Overall, we have the following observations and comments.

Our Findings

(I) Should Strengthen Monitoring of Bicycle Rental Service Operators

3. There are 14 recreational venues under LCSD with bicycle rental services provided by operators engaged by the Department. The business permit for conducting bicycles rental services ("Permit") is granted by LCSD through open tender. The contract terms of the Permit explicitly forbid placing bicycles and articles relating to the bicycle rental services outside the Permit Area.

4. Our case study shows that LCSD had for years failed to take timely and decisive enforcement actions against the Operator's irregularities in accordance with

contract terms. Our multiple site inspections also found the same irregularities at other LCSD venues. It seems to be a common practice for operators to leave bicycles lying around in contravention of the regulations, and this has invited doubts as to whether LCSD had ever reminded the operators of the irregularities or take enforcement action against them in the past.

5. We consider it imperative that LCSD strengthen its monitoring of bicycle rental service operators and take decisive enforcement action against violations pursuant to contract terms.

(II) Should Step up Staff Training on Enforcing Permit Contract Terms

6. The case selected for study shows that during the period when the Operator had violated the contract terms and placed its bicycles outside the Permit Area, LCSD had sought legal advice twice from the Department of Justice on the enforcement of Permit contract terms and related procedures. It subsequently learnt that further enforcement action could not be taken against the Operator's aggravated violations because the reminders LCSD had sent to the Operator earlier did not contain relevant wordings of warning.

7. We are of the view that the above may reflect that LCSD frontline staff had failed to fully understand the Permit contract terms and relevant contract management work. LCSD should step up staff training in this aspect.

(III) Unsystematic and Inconsistent Enforcement Mechanism

8. According to the relevant guidelines, LCSD staff issue reminders or warning letters to operators based on the gravity of the irregularities found. If there is no evident improvement after the third warning letter, the Department can consider suspending the operator's business or terminating the contract. Nevertheless, the guidelines did not clearly specify how many verbal and written reminders would warrant a warning letter, or whether written reminders and warning letters have a validity period. It is mainly up to individual staff to make decisions depending on the actual circumstances of each case.

9. We are of the view that in order to carry out enforcement more efficiently and fairly, LCSD should enhance the current enforcement regime and the relevant guidelines, for example, by specifying clearly that the Department will issue a warning letter if a cumulative number of verbal or written reminders are given within a certain

period of time, and that the criteria for the issuance of a warning letter should be made public. This would facilitate LCSD frontline staff to carry out enforcement work through consistent standards.

(IV) Should Review Operators' Arrangements for Storing and Displaying Bicycles

10. We notice that operators would display bicycles of various models for customers to choose and try so that they can pick the one they consider suitable, safe and easy to control. Such *modus operandi* is not unreasonable, and may even have practical need for it. We consider that while LCSD has a duty to monitor compliance with Permit contract terms, it should also review whether the current regulatory regime is too restrictive for the operators in the business.

11. LCSD should conduct a comprehensive review on the operation of bicycle rental services at its venues. If it is considered that the space or the geographical location of the bicycle kiosks are found to hamper business operations, the Department should examine whether operators can be allowed to use the space outside the Permit Area for placing their bicycles as long as the relevant regulations are complied with. In the long run, LCSD should consider including part of the venue as the Permit Area when drafting new contracts for bicycle rental services in the future for better management.

Our Recommendations

12. In conclusion, The Ombudsman has made the following recommendations to LCSD:

(1) to keep monitoring the Operator closely. Should it continue to occupy the space outside the Permit Area in violation of contract terms, decisive enforcement action must be taken;

(2) to strengthen monitoring of bicycle rental service operators and take decisive enforcement action against irregularities pursuant to contract terms;

(3) to step up staff training on the enforcement of Permit contract terms and relevant procedures to ensure that enforcement actions are taken rigorously, accurately and effectively;

(4) to examine how to enhance the current enforcement regime and relevant guidelines, so as to carry out enforcement work in a more efficient and fairer manner in accordance with consistent standards;

(5) to conduct a comprehensive review on the operation of bicycle rental services at venues under its purview, and to examine the feasibility of allowing operators to use the space outside the Permit area for placing their bicycles through management arrangements or measures, subject to compliance with the relevant requirements;

(6) to consider revising the terms of future Permit contracts to suitably include a certain area outside the bicycle kiosks as part of the Permit Area for better management;

(7) to collect information on the performance of operators (especially irregularities and their approach to complying with reminders and warning letters, etc.) and include such information into the LCSD database as reference in approving new Permits in the future; and

(8) to step up publicity to encourage members of the public to monitor operators' performance and report irregularities to LCSD at once.

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